

1 what was re-branded at that time.

2 Q Let me ask this, was there a shift at
3 some point from targeting consumers, first charging
4 consumers and then shifting over to targeting
5 financial institutions or, you know, entities.

6 A There was a -- a shift from targeting the
7 early days of Ripple there were -- we were
8 targeting something called gateways, which are like
9 lightweight financial institutions. Some of them,
10 like 'cause it was -- some of these guys just
11 appeared on the XRP ledger, it's decentralized and
12 you can -- you can launch on your own.

13 And so we started seeing that happen
14 pretty early on. And there was developer focus,
15 like I had mentioned, and -- and then, you know,
16 market maker focus as well. Meaning, products to
17 bring liquidity to the XRP ledger, in the
18 decentralized exchange.

19 And from my recollection, you know,
20 sometime around when -- when Brad joined, Brad's,
21 you know, a big believer in focus. So, we -- you
22 know, when I want to do something, you know, do it
23 really well. We started to zone in, and again like
24 this is part of what I was saying with
25 product-market fit, that there could be tons of

1 different -- and I still believe that there's going
2 be tons of different use case out there using the
3 XRP ledger and other blockchains, but instead of
4 trying to chase all these things -- well, identity
5 was another one I forgot to mention as an early
6 sort of thing to look at -- instead of trying to
7 chase all these things, which, you know, identity
8 blah, blah, blah, like trying to like go after a
9 concerted customer segment and nailing that
10 experience right, was -- was super important.

11 And so, I don't know if I would call it a
12 re-brand but it was definitely a focus. There was
13 some point around 2015 where, you know, we believe
14 that there's going to be tons of other applications
15 and we've seen those flourish on top of the XRP
16 ledger. But Ripple, you know, really went in and
17 focused on one, cross-border payments and then the
18 customer segment being financial institutions. And
19 I think that was -- that helped bring a lot of
20 clarity in terms of our customers -- our target
21 customers better understanding us as well.

22 Q So, that was at the time -- in or around
23 the time that Brad joined? Garlinghouse?

24 A Yeah. We started focusing on financial
25 institutions a little bit before that. Again,

1 there was like this -- this evolution of these --
2 this gateway concept, to like wait, we should --
3 there's gateways that do this in the real world,
4 they're called financial institutions. And so we
5 started focusing there.

6 And -- but, I think the big difference
7 was that we started focusing on financial
8 institutions but it was and, all these other
9 things. And I think what Brad -- we said, no, no,
10 no. Let's try to nail this segment, provide a
11 really innovative experience and then, you know,
12 other developers or other companies can take on
13 some of these other components but let's be
14 really -- or Ripple in the future can expand on
15 them. But like, let's be really focused on
16 cross-boarder payments and financial institutions.

17 Q And why cross-boarder payments, as
18 opposed to -- I understand the reasoning to narrow
19 down the focus to one focus, but why was it
20 cross-boarder payments and FIs?

21 A One, that's what we saw the most traction
22 in. Secondly, if you -- real -- and this is my
23 opinion, if you really boil down what digital
24 assets are good for and blockchain is really good
25 for and why it's so novel is that it removes

1 counter-parties. And like that -- the thing I
2 mentioned before, I think still resonates today, is
3 that with domestic payments you have the central
4 bank or you have the fed that acts as the trust
5 mechanism for domestic payments. But there's no
6 central bank for the world.

7 And so, these financial institutions
8 can't really trust each other, which is -- which is
9 really where I believe you can provide -- where the
10 sort of level one applications, early applications
11 of blockchain are in the cross-boarder payments
12 realm. It specifically helps financial institutions
13 send value without necessarily having the nostro,
14 vostro accounts and strong trust relationships with
15 each other.

16 Q Did that new focus -- how did that --
17 what was the timing of that in relation to Ripple
18 Trade and the FinCen settlement. And so, let me
19 take a step back.

20 What is Ripple Trade?

21 A You know, we -- there was a -- we talked
22 a little bit about it. It was, you know, there's
23 different iterations of it. It's based on this
24 open source code called the XRPL client. The way
25 that I think about it from a product perspective is

1 that just like Netscape, a Chrome or Firefox is
2 like, you know, a view into the World Wide Web,
3 this is a view into the XRP ledger and activity
4 into the XRP ledger. And so, the other way to
5 access the XRP ledger would be to break code
6 through APIs.

7 Q Was Ripple Trade a consumer facing
8 product?

9 A Consumers could use Ripple Trade but it
10 was very -- it was very -- it was still very
11 cumber-- it's a technical product. The real users
12 of -- the power users, as we call them, of Ripple
13 Trade were liquidity providers, our market makers.

14 And the reason was is that, at that time
15 there were a lot -- not a lot, but there were other
16 options that were far easier in terms of getting
17 access to something simple like moving XRP.

18 But, if you think about like all the
19 mechanics you need to trade using a decentralized
20 exchange, that's really difficult to code on your
21 own. And this provided market makers a liquidity
22 like a interface. And so, if you look at the code
23 base of Ripple Trade I would guess that 80 percent
24 of it is for conducting trades on the decentralized
25 exchange.

1 Q When was Ripple Trade created?

2 A Well, the XRPL client was like the
3 original code base. I don't know when that was
4 created. We took that code base and essentially
5 called it Ripple Trade. And we -- we put that XRPL
6 client was something that's called a downloadable,
7 which means it runs locally. Similar to like a
8 hardware wallet or an off-line wallet, in Ripple
9 Trade it's hosted. That's really like the big
10 difference between the two from my knowledge or
11 from my recollection. And when it became Ripple
12 Trade, I don't a hundred percent remember, but
13 maybe 2000 -- well, you can find out.

14 Q Did you have responsibilities related to
15 Ripple Trade?

16 A Yes.

17 Q And what were they?

18 A So, they range -- I mean from, you know,
19 copy, like writing copy for -- this is early on
20 when product a lot of things and --

21 Q That term I'm not familiar with.

22 A Oh, sorry.

23 Q When you say, "copy", what does that
24 mean?

25 A So writing copy means that since it's a

1 user interface, like the actual text to describe
2 the buttons, how to use it, the flow, and all that.
3 Anything that needed to be -- it wasn't a lot of
4 work but anything that needed to be modified from
5 the downloadable client to Ripple Trade was not a
6 substantial amount of work. Cause largely it was
7 lifted from the downloadable client that already
8 existed.

9 Q So you said Ripple Trade was primarily
10 used as an interface for market makers who were
11 creating liquidity in XRP; is that correct?

12 A I don't know if they were all creating
13 liquidity in XRP, but they were all -- sorry. The
14 ones that -- that the market makers liquidity
15 provider it's using Ripple Trade, that was
16 referring to, were putting in orders or creating
17 liquidity on the decentralized exchange that's
18 native to the XRP ledger.

19 And on that decentralized exchange you
20 could have an order that, for example, traded U.S.
21 dollars to Mexican pesos. So that's why I was
22 saying -- that's not -- that wasn't super common,
23 but you could -- you could make those kinds of
24 trades.

25 Q Why were people making markets in XRP at

1 the time in 2014, 2015?

2 A It's a decentralized technology, so,
 3 it's -- part of the challenge from this
 4 decentralized -- from using decentralized
 5 technology, is like you don't really know why folks
 6 are making these, cause you -- if people just code
 7 to it or they take the -- what I was referring to
 8 as the downloaded XRPL client and they just start
 9 making trades. So part of the challenge in
 10 developing product in this space at that time
 11 especially was that it's really tough to get
 12 customer feedback. So, for a lot of them I didn't
 13 know -- I do know that there weren't a lot of, what
 14 I was referring to this evolution in liquidity,
 15 there weren't a lot of centralized exchanges then.
 16 So this was a little bit something that was novel
 17 to that XRP ledger.

18 I don't know specifics but at some point
 19 it made up a decent portion of the general crypto
 20 liquidity or virtual currency liquidity out there.

21 Q And why was Ripple Trade important for
 22 Ripple's business?

23 A So, I mentioned, you know, one of the
 24 things that was lacking in the market, to develop
 25 xRapid or ODL would be liquidity. So from my

1 perspective it was very difficult to find liquidity
2 providers. Still, you know, to this day, but, you
3 know, even back then. And so, anything that you
4 could do to make it easier to provide liquidity, we
5 needed, I don't remember the exact numbers, but we
6 needed to go from the very little liquidity that
7 was there at that time to something substantial to
8 offer to our customers.

9 Q Did Ripple Trade eventually shut down?

10 A Yes. It eventually shut down.

11 Q And what prompted that?

12 A I don't know specifics, but I believe it
13 was related to the FinCen settlement.

14 Q Did you discuss with anyone why it shut
15 down, anyone at the company?

16 A Yes.

17 Q And what did you discuss?

18 MR. HECKER: Put to the side any
19 discussions with counsel. But any other
20 discussions are fair game.

21 MS. WAXMAN: Yeah. Obviously. I don't
22 want to know any privileged communications.

23 A Sorry, what was the question?

24 Q The original question was, why did Ripple
25 Trade shut down. And what do you know about the

1 reason behind Ripple Trade shutting down.

2 MR. HECKER: I think he answered that
3 one. That it was in connection with the FinCen
4 settlement.

5 MS. WAXMAN: Right.

6 Q And so the next question was, did you
7 have any discussions with people that Ripple Trade
8 is shutting down.

9 A Yes, I did.

10 Q And what did you discuss?

11 A I had mentioned earlier that it's really
12 complicated to develop on decentralized
13 applications because you don't know -- it's not
14 like you have a database to go after and talk to
15 folks.

16 And so, shutting it down is not as simple
17 as just, you know, putting text up there and copy
18 including saying, it shut down. We had to provide
19 a migration path to another service. And so there
20 was a lot of the coordination around that.

21 Q Did Ripple Trade shut down as a result
22 of -- strike that.

23 Were there any conclusions made in
24 connection with the FinCen settlement?

25 A Can you repeat the question?

1 Q Were there any conclusions made about
2 Ripple or its operations in connection with the
3 FinCen settlement?

4 A My role --

5 MR. HECKER: I'm just not sure what you
6 mean by conclusions?

7 MS. WAXMAN: Findings.

8 MR. CERESNEY: Findings that the
9 settlement made or findings for -- implications
10 from the settlement for Ripple.

11 Q Well, what were the findings of the
12 FinCen settlement, if you know. Generally. You're
13 not a lawyer, just generally, what was the
14 effect -- I'll ask another question.

15 What was the effect of the FinCen
16 settlement on the company, if any?

17 A Well, there was a fine. So there was a
18 monetary fine. I can't give you specific of the
19 clause cause I don't know quite the interpretation
20 of it. But there were -- there was a request by
21 FinCen, and, you know, one was the fine. The other
22 one was around some terminology about access to the
23 XRP ledger I believe.

24 MR. CERESNEY: Just one clarification, we
25 keep referring to the FinCen settlement, but I

1 think it was the Department of Justice.

2 MS. WAXMAN: Yeah, so there's -- I
3 think -- fair point.

4 Q Who would know why or the -- who was
5 involved in the decision to shut down Ripple Trade?

6 A The decision to shut down Ripple Trade?

7 MR. CERESNEY: Sorry. Just to clarify on
8 that; do you mean the decision to include it as a
9 provision in the settlement or the decision once
10 it's in the settlement to shut it down?

11 Q Well, I don't think -- was a part of --
12 what is the provision in the settlement to shut
13 down Ripple Trade?

14 A As I say, the -- the provision I remember
15 was about providing access to the XRP ledger. And
16 then the interpretation being that Ripple Trade
17 provides access to the XRP ledger.

18 I don't specifically remember if shutting
19 down Ripple Trade was in the settlement or not.
20 But perhaps it was inferred. The people that would
21 know would be the legal counsel and compliance
22 folks at the time.

23 MS. WAXMAN: Okay. Let's take a five
24 minute break. It's 2:56 we're off the record.

25 (A brief recess was taken.)

1 (SEC Exhibit No. 4 was marked
2 for identification.)

3 MS. WAXMAN: Okay. We are back on the
4 record on Thursday, December 5th, at 3:08.

5 Mr. Birla, while we were off the record,
6 did you have substantive discussion with the
7 staff?

8 A No.

9 Q Great. I'm showing you what's been
10 marked as Exhibit No. 4. If you look at it and let
11 me know when you're done.

12 MR. HECKER: Thank you.

13 Q Actually --

14 A What was the document now?

15 Q Actually, I'm going to give you a
16 different document first.

17 MR. CERESNEY: One more --

18 MS. WAXMAN: Yeah, yeah. We'll get to
19 it, but I'm going to actually introduce a
20 different document first.

21 MR. HECKER: Okay. No problem.

22 MR. CERESNEY: You want it back? Or just
23 hold on to it.

24 MS. WAXMAN: It's easier. Let's do this
25 one, sorry.

1 (SEC Exhibit No. 5 was marked
2 for identification.)

3 Q I'm showing you what's been marked as
4 Exhibit No. 5. Sounds like everyone has seen the
5 document very recently.

6 Just take a couple of moments to look at
7 it and let me know when you're done.

8 (Witness complies.)

9 Do you recall what's been marked as
10 exhibit No. 5?

11 A I vaguely recall the e-mail.

12 Q Have you seen this document recently?

13 A I have.

14 Q Without divulging any conversations that
15 you've had with counsel, when have you seen it?

16 MR. CERESNEY: I typically object to
17 questions about what documents were reviewed in
18 prep. I'm not sure what it advances.

19 MS. WAXMAN: I know that. That's fine.

20 Q Who's Monica Long?

21 A Monica Long is -- her current role is
22 Senior Vice President of Marketing.

23 Q And June 2015, what was her role?

24 A I don't remember her exact role at that
25 time.

1 Q Okay. What did you mean, first of all,
2 why did you send the thread to Monica?

3 A I don't know.

4 Q What is the thread about?

5 A Thematically? Are you asking what the
6 thread is about thematically?

7 Q (No audible response.)

8 A Thematically the -- from my recollection,
9 the thread is about -- I had mentioned that when
10 Brad came into Ripple he was a strong believer in
11 focus, and -- do a few things and do them right.
12 And that's how you win with start-ups and
13 technology and thematically this thread is about
14 focus.

15 Q Okay. More specifically, what is Arthur
16 referencing in the first original e-mail, what is
17 he talking about?

18 MR. HECKER: Sorry. First e-mail is not
19 from Arthur, I don't think, right? Bottom line,
20 second page?

21 MR. CERESNEY: By Brad Garlinghouse.

22 MR. HECKER: Brad Garlinghouse.

23 MS. WAXMAN: That's fine.

24 Q More specifically, what is Brad's e-mail
25 about?

1 A Well, Brad's portion of the e-mail is --
2 well, I think what Brad is doing in his e-mail
3 response, and I -- again, I don't know what Brad
4 means, so I think you -- but I think what he's
5 raising is, thematically to Arthur that, if you,
6 you know, if you want to have -- given Arthur is
7 not a operator at the company, but if you have a
8 disagreement or misalignment around the direction,
9 potentially you should come to Brad himself or the
10 people involved and not go straight to Chris, which
11 erodes trust.

12 And then you look at the -- I don't --
13 it's tough to see where -- okay. So that's one.
14 I'm trying to remember the second one.

15 Q Do you know what Arthur means when he
16 writes, "He wants to keep" and he's referring to
17 Chris, "he wants to keep Ripple Trade for
18 non-consumer. Our target is speculators, traders
19 and market makers."?

20 A I interpret this as liquidity providers.
21 So, I had mentioned that Ripple Trades power user
22 is a market maker or liquidity provider, that's --
23 I think he's referring to that.

24 Q Okay. And what is Brad's reaction?

25 A The first reaction is about trust and

1 culture as I mentioned before. Going to Chris
2 directly erodes trust. I can only speculate on the
3 second one, paragraph is -- I'm not, so I don't
4 know the second paragraph.

5 Third paragraph is about focus, as I
6 mentioned earlier. Strong focus, and I think he's
7 quoting Steve Jobs here.

8 Q The -- he writes in the middle of the
9 page, second topic the conclusion itself, "as
10 you're aware from the leadership meeting the
11 existence of Ripple Trade equates to an increase in
12 compliance risk and legal risk."

13 What legal risk is he talking about?

14 A I, you know, my role at Ripple is on the
15 product side. So I don't assess legal risk and I
16 don't -- I don't have full context.

17 Q Did you have any discussions with anyone
18 about potential legal or compliance risk related to
19 Ripple Trade for non-consumers?

20 A Can you repeat the question?

21 Q Did you discuss with anyone at the
22 company the potential risk connected to keeping
23 Ripple Trade open for this use?

24 A I don't recall any conversations
25 regarding assessing the legal risk. My job at

1 Ripple isn't to assess the legal risk. The legal
2 and compliance team provides the recommendation on
3 the legal risk.

4 Q Did you discuss with anybody whether
5 selling XRP to speculators, traders and market
6 makers could be seen as sales of securities?

7 A I did not -- I do not recall having
8 conversations regarding that particular topic.

9 Q So the -- you forward the thread to
10 Monica and at the top you said, "XRP is going to be
11 the death of us."

12 What did you mean, and why did you say
13 that?

14 A This is a while ago. I think I was
15 referring to focus. And that -- I don't remember
16 how many people we had in 2015, but it wasn't a
17 lot. We had limited resources. We were going in a
18 direction to start working with regulated financial
19 institutions. That's -- if you only have very --
20 the biggest constraint usually at a tech company
21 are engineers.

22 And so spreading ourselves too thin, Brad
23 Garlinghouse alludes to it, you do a lot of things,
24 but you don't do them well. And if we didn't -- if
25 we didn't start focusing at this time as Brad

1 alludes to in his e-mail, then, you know, you end
2 up being -- I talked about product market further
3 differentiating, you're not differentiating from
4 anyone else, you're just, you know, another product
5 out there with no real traction.

6 Q I'm not sure I understand what you meant
7 by XRP is going to be the death of us.

8 Did you believe that there was any risk
9 in continuing to use XRP for or any risk in
10 connection with the company using XRP as part of
11 its business?

12 A No. At this time frame and even early on
13 my challenge with running product at Ripple was one
14 about focus. And, you know, I believe there was a
15 certain sequencing of things to work towards. And
16 in trying to do everything at the same time, didn't
17 make a whole lot of sense to us. And I had a -- I
18 had some discomfort with us being able to
19 successfully build a business doing everything that
20 we were trying to do at the time. And I don't
21 remember how many engineers we had, but it was
22 maybe 15 engineers, maybe less.

23 Q Did you have any specific discomfort
24 related to XRP.

25 A No.

1 Q And what did you want the company to
2 focus on instead of what Larsen was suggesting?

3 A I don't know what Larsen was suggesting.
4 I only know from the e-mail what Arthur was
5 suggesting. I believed, again, back to focus, is
6 that you pick a customer segment, you start with
7 that customer segment, you solve a problem with
8 that customer segment and then there's sequencing,
9 you know, beyond that.

10 Trying to do everything at once didn't
11 make a whole lot of sense. I, you know, this is
12 around 2015, I believe the first designs or the
13 first incarnation of the xCurrent product was being
14 developed around this time as well.

15 Q Did you have -- did you want to move away
16 from using XRP as part of Ripple's products?

17 A So, at this time the first version of
18 xCurrent did not have XRP native from my
19 understanding in it. However, from my recollection
20 in it, I mentioned earlier that there might be some
21 technical signing capability we leveraged from the
22 XRP ledger. But, you know, at this time the
23 xCurrent product wasn't native to -- what I mean,
24 didn't natively have the ODL or xRapid component.
25 2015, I don't know what the markets are

1 specifically, but the big constraint at the time
2 was -- two big constraints, number 1 being
3 liquidity.

4 Even if we offered the product the most
5 we could really move at that time would be maybe a
6 couple of hundred thousand dollars. Customers
7 wanted -- needed to move more, and the second
8 component was that there weren't exchanges
9 available. Exchanges provide the on and off ramps
10 into traditional fiat, currency, and I don't think
11 that was a robust ecosystem of exchanges in 2015.

12 Q Were there any other constraints to
13 use -- constraints in connection with using XRP?

14 A Not specifically to XRP.

15 Q Okay.

16 THE WITNESS: Want this back?

17 MS. WAXMAN: Sure. So now, where's
18 the -- who has the marked exhibit?

19 MR. HECKER: This four?

20 MR. CERESNEY: I don't.

21 MR. ALDEROTY: I'm sorry.

22 Q Mr. Birla, I'm showing you what's
23 previously marked as Exhibit No. 4. Just take a
24 couple of minutes to look at it and then, let me
25 know when you're done.

1 MR. HECKER: Do want him to read this? I
2 mean, you can ask him, but it's pretty dense.

3 MS. WAXMAN: No. Just take as much time
4 as you need, to look through it. If you want to
5 read it, let us know. But I will point you to
6 some specific sections. I'll give you time to
7 read it.

8 MR. HECKER: Frankly, I'm a little
9 concerned. It's a detailed legal opinion he
10 hasn't read. And so if he's going to be
11 questioned on it, I would ask him to read it. But
12 I don't want to make it seem like he's using up
13 your time ineffectively.

14 MS. WAXMAN: Um --

15 MR. HECKER: I mean, it predates his time
16 at the company.

17 MS. WAXMAN: Okay. Well, why don't we
18 just play it by ear. And if it -- you know, the
19 questions are too specific and you want to make an
20 objection then --

21 MR. HECKER: I'm not objecting. I'm
22 just -- I would urge him to read it if you're
23 going to ask him questions about the legal
24 analysis. I think that's the issue.

25 MS. WAXMAN: Okay. Do you want to --

1 maybe we'll take a break then. It's -- we can go
2 off the record. Or -- we can just -- I'll give
3 you an opportunity to read it. We can stay on the
4 record. Take as long as you want.

5 MR. CERESNEY: As he's reading, is there
6 a particular part you're going to focus on?

7 MS. WAXMAN: Yes. So, I would read, you
8 know, look at pages one through eight.

9 MR. CERESNEY: I take it your first
10 question is going to be whether he's seen it,
11 right?

12 MS. WAXMAN: Yeah.

13 MR. CERESNEY: So, I don't know if you
14 can answer that question before you read it.

15 Do you recall seeing that document?

16 THE WITNESS: I do not.

17 MR. CERESNEY: Okay. So go ahead, we'll
18 let you read.

19 MS. WAXMAN: Take as long as you need.

20 A Should I go beyond eight or just focus to
21 eight?

22 Q Just make sure you read the
23 recommendation section. And then if you want to
24 just take a look at the -- the section related to
25 the federal securities -- the legal analysis

1 section related to the federal securities law,
2 which starts on 15.

3 MR. CERESNEY: Fifteen to 18.

4 MS. WAXMAN: Yeah.

5 Q Turning your attention to the first page,
6 what are Ripple credits?

7 A I do not know.

8 Q Are they the same thing as XRP tokens?

9 A I don't know.

10 Q I know you said you never -- you've never
11 seen this document, but did you know that there was
12 a legal opinion. That the legal opinion with
13 respect to the sale of Ripple credits existed?

14 A I don't recall being aware that something
15 like this existed.

16 Q Okay. Turning to page two, third bullet
17 point from the bottom, it says, "Founders will not
18 accept investment in company exchange for the
19 issuance of Ripple credits instead investors will
20 receive stock in company."

21 A Sorry where are you?

22 MR. HECKER: Third bullet from the
23 bottom.

24 THE WITNESS: Oh, bottom. Sorry.

25 MR. HECKER: This one.

1 Q Does that clarify what Ripple credits
2 are?

3 A No.

4 Q Do you think Ripple credits are XRP?

5 A I can only speculate. I don't know for
6 certain. There's no mention of XRP. This was
7 before my time.

8 Q Have you ever heard the of the term
9 Ripple credits?

10 A I have not heard of the term Ripple
11 credits.

12 Q Do you have any reason to believe that
13 Ripple credits does not mean -- is not referring to
14 XRP tokens?

15 A Can you restate the question?

16 Q Do you have any reason to believe that
17 Ripple credits is not the same thing as XRP tokens?

18 A Well, I've never heard of it called
19 Ripple credits before.

20 Q Okay. Did you ever discuss with anyone
21 the fact that the founders would not accept
22 investment in Ripple company, but instead received
23 Ripple credits?

24 A I've not heard of that to my knowledge.
25 That, actually -- can you repeat the question?

1 Q Did you ever discuss with anyone that the
2 founders of Ripple received Ripple credits in lieu
3 of stock in Ripple or equity in Ripple?

4 A I do not recall having a conversation
5 with anybody.

6 MR. CERESNEY: By the way, I'm not sure
7 that's exactly what it says. But he didn't know
8 anyway, so, that's fine.

9 Q Did you ever have -- turning to the top
10 of page three, says, "Company will control the
11 distribution of Ripple credits which it will
12 distribute to end users consumers with no
13 consideration."

14 Did you have any discussion with anybody,
15 the fact that whether -- did you discuss with
16 anybody whether or not to sell Ripple credits?

17 MR. HECKER: Sorry. I think it's
18 difficult for him to answer that having not heard
19 of Ripple credits. If you could --

20 MS. WAXMAN: Yeah, well the problem is, I
21 mean I -- my reading of the document is that
22 Ripple credits are the same thing as XRP tokens.

23 MR. CERESNEY: So, why don't you just ask
24 him to assume that that's what it means and see if
25 he's heard it.

1 MS. WAXMAN: Okay. Thank you.

2 Q So let's assume that Ripple credits are
3 XRP tokens here, and -- did you ever discuss any --
4 I'll take that back.

5 Did you ever discuss with anyone in the
6 company any of the recommendations in this memo.

7 A I've not -- from my recollection, I've
8 not seen the memo. I've not -- again, to my
9 recollection, I don't remember discussing any
10 portions or any reference to the memo.

11 Q Did you ever discuss with anybody other
12 than counsel, whether or not Ripple's sales of
13 securities would be viewed as sales of -- sales of
14 XRP would be viewed as sales of securities?

15 MR. CERESNEY: Just to be clear, separate
16 and apart from this memo has he ever had that kind
17 of discussion.

18 MS. WAXMAN: Yes.

19 A So the question is, have I ever discussed
20 if XRP is a -- like debated whether XRP is a
21 security or?

22 Q No. The question is, have you ever
23 discussed with anybody whether Ripple sales of XRP
24 constituted sales of securities?

25 A I don't recall having a discussion back

1 and forth regarding that matter with anyone else.

2 Yeah. I've not, to my knowledge.

3 Q Did you ever have a discussion with
4 anybody as to whether XRP could be viewed as a
5 security? Other than with counsel.

6 A I do not recall having conversations of
7 that outside of counsel.

8 Q Okay. If you turn to page six, there's a
9 recommendation section to the memo. And if you
10 turn to paragraph C, the memo says, in the middle
11 of the paragraph, "Company should be careful in
12 it's approach to promoting and marketing the Ripple
13 Network and Ripple credits. It will be important
14 that company and founders do not mislead
15 participants, particularly with regard to the
16 liquidity and expectations concerning the value or
17 safety of Ripple credits."

18 Did you ever discuss with anyone this
19 recommendation related to liquidity and
20 expectations concerning the value or safety of
21 Ripple credit, which I've asked you to assume are
22 XRP tokens.

23 A So, I guess parsing that out, I have had
24 conversations regarding liquidity of XRP.
25 Specifically cause that's needed for the product to

1 work and function.

2 I do not recall having conversations
3 about promoting and marketing XRP.

4 Q Okay. If you go down to paragraph F, the
5 recommendation says, "Do not promote Ripple
6 credits", and I've asked you to assume Ripple
7 credits are XRP, so do not promote XRP "as being an
8 investment opportunity."

9 And then later in the paragraph it says,
10 "Founders and company should make clear that it's
11 mission is to facilitate online commerce and not
12 speculative investment trading."

13 Did you ever discuss this recommendation
14 with anyone at the company?

15 A I have not seen this recommendation prior
16 to reviewing this document.

17 Q If you turn to paragraph --

18 MR. DANIELS: Sorry. Just to be clear, I
19 don't think she's talking about just this specific
20 recommendation, but this general idea of making
21 clear that the mission is to facilitate online
22 commerce and not speculative investment trading.

23 Was that general idea ever discussed apart from
24 this specific document?

25 THE WITNESS: You know, we discussed many

1 applications of -- and use cases for XRP. I don't
2 remember if online commerce was one of the major
3 ones we discussed.

4 MR. ALDEROTY: I'm sorry, can we go off
5 the record for 30 seconds. I want to make a -- I
6 mean, I can do it on the record. I think the
7 record is getting convoluted.

8 The witness has said he doesn't know
9 whether the Ripple credits is XRP. I mean we're
10 all assuming that the credits are XRP based on
11 your questions. But you keep pointing to the
12 memo. And I just -- I think there's gonna be
13 confusion in the record as to whether his answers
14 are tied to the memo or tied to the assumption
15 that Ms. Waxman is asking the witness to make it
16 the memo meaning credits are XRP.

17 MR. CERESNEY: You were asking it as to
18 whether he's had discussions about that issue,
19 right?

20 MR. ALDEROTY: But that keeps --

21 MR. CERESNEY: Why don't we -- why don't
22 we go off the record.

23 MS. WAXMAN: We're off the record at 3:49
24 p.m.

25 (A discussion was held off the record.)

1 (SEC Exhibit No. 6 was marked
2 for identification.)

3 MS. WAXMAN: We're back on the record at
4 3:55 p.m.

5 MR. CERESNEY: So, we'll just put on the
6 record, we think if you're going to ask questions
7 about the contents of the memo, you should do so
8 from the memo. But if your question is broader,
9 whether he's had discussions about a particular
10 issue that's referenced in the memo, that you put
11 the memo aside and just ask him, does he recall
12 discussions about this issue.

13 MS. WAXMAN: That's fine. Thank you.

14 Q So putting aside the memo, did you have
15 any discussions with anybody about promoting -- did
16 you have any discussions with anybody about
17 statements that spoke about the increase in value
18 of XRP?

19 MR. CERESNEY: I hate to do this.

20 Are you speaking-- is there a particular
21 time frame, first of all? Or do you mean ever?

22 MS. WAXMAN: Okay.

23 MR. CERESNEY: And then the other
24 question is, when you say, "statements about
25 increases in value", that's a pretty broad

1 concept.

2 MS. WAXMAN: Yes. I understand.

3 Q Did you have any -- did you discuss with
4 anyone statements that alluded to the -- regarding
5 the increase of -- increase in value and price of
6 XRP during your entire time period with Ripple?

7 A I don't recall.

8 Q Did you discuss aside -- setting aside
9 the memo, did you have -- did you discuss with
10 anyone speculative trading in XRP?

11 A Speculative trading and liquidity
12 providing, you know, those terms get sort of meshed
13 altogether. And, you know, speculative trading, I
14 don't recall conversations around speculative
15 trading. I do recall conversations around market
16 making or liquidity provisioning.

17 Q I'd like to show you what's been marked
18 as Exhibit No. 6.

19 Okay. Do you recognize what's been mark
20 marked as Exhibit 6?

21 A I do not recognize Exhibit 6.

22 Q Who is [REDACTED]

23 A [REDACTED] is a product manager on my
24 team.

25 Q Did she report directly to you?

1 A She does not report to me directly right
2 now. I don't exactly remember at this time frame
3 if she reported directly to me.

4 Q So the -- in the "To" line it says,
5 "Leadership", and then the "cc" line it said,
6 "product".

7 Were you on either of those distribution
8 lists?

9 A I was on both of all those distribution
10 lists.

11 Q So, would you have received this e-mail
12 on April 19, 2017?

13 A Yes. I would have likely have received
14 this e-mail.

15 Q If you turn to the page with the Bates
16 Stamp 43125, the --

17 A This one?

18 Q Yeah, the other side. Has a Bates Stamp
19 number on the bottom, that's the number I'm
20 referring to. At the very top it says,
21 "Additionally, number one XRP priority for Q2
22 internally is higher speculative volume, which will
23 help with XRP liquidity.

24 Does this refresh your recollection as to
25 whether you've discussed speculative XRP trading

1 with anyone at the company?

2 MR. HECKER: Well -- go ahead.

3 A The interpretation on speculative volume
4 can mean a number of things. The main thing from
5 the product perspective with [REDACTED] and myself are
6 product people, is liquidity at exchanges. And,
7 you know, you can say that some of the liquidity at
8 exchanges could be natural or speculative volume.

9 Q What do you think -- what does
10 speculative volume mean?

11 A So, there's market making volume at
12 exchanges -- maybe just taking a step back.

13 The way that ODL and xRapid work is that
14 you -- you start a payment at the sending exchange,
15 if you heard of an exchange called Bitstamp, for
16 example, they facilitate a trade between U.S.
17 dollars and XRP. And then the XRP is sent to the
18 receiving exchange, I'll just use Bitso, in Mexico
19 as an example, and then it's converted from XRP to
20 Mexican pesos. And then usually that exchange on
21 the receiving end does something called clearing
22 into local rails. And clearing into local rails
23 is, in the United States we have ACH, so if you've
24 received an ACH, in Mexico they have SPEI, that's
25 an instant clearing. So the receiving exchange

1 helps facilitate the clearing.

2 On an exchange in itself, it's an open
3 order book. An open order book means that if you
4 register with that exchange, you can provide
5 liquidity. And liquidity means putting in a buy or
6 sell, you know, trade. These exchanges list a
7 variety of digital assets and the exchange that I
8 mentioned, XRP, is listed on both of them against
9 U.S. dollars, Mexican pesos on the receiving side.
10 It's -- it's nearly impossible for anyone to know
11 the distinction between, you know, the different
12 actors on the exchange.

13 So a lot of times, you know, you classify
14 some as market making and the others as natural
15 liquidity or speculative liquidity. But those are
16 managed by the sending and receiving exchanges
17 themselves.

18 Q Do you know who made it a priority to
19 increase speculative volume in Q2?

20 A The -- from a product perspective we need
21 for the product known as xRapid or for exchanges,
22 you need liquidity. And, you know, for it to
23 function. And so, you know, we need liquidity in
24 general. As I was referring to earlier, we know
25 about market making, market makers that make

1 liquidity. Everyone else is classified as either
2 something else referred to as a variety of things.
3 This case could be speculative, could be natural
4 liquidity. That liquidity is really built by the
5 exchanges. So, as a -- I can imagine that as a
6 priority for the product we want more liquidity,
7 you know, to facilitate a better experience for
8 xRapid/ODL.

9 Q Who indicated that it would be a
10 priority, speculative volume would be a priority
11 for Q2?

12 Who at the company?

13 A Where is -- where is the specific line
14 are you looking at as far as a goal. Is there a
15 reference to a goal?

16 Q Well, it says, at the very top --

17 A Okay.

18 Q Who made that a priority?

19 A I don't know -- I don't know who made
20 this a priority.

21 Q And how could the company create higher
22 speculative volume?

23 A You know, like I mentioned before,
24 speculative is a bucket for liquidity that we don't
25 know at an exchange. And for the product to

1 function, you need more and more liquidity. And
2 those -- you know, and that bucket could be other
3 hedge funds or other liquidity providers.

4 And so, if you have a real use case,
5 which at least in my opinion are very few have in
6 the blockchain space, then that attracts, you know,
7 other hedge funds, other market makers to join and
8 participate in this -- in this marketplace or
9 this -- on the exchanges. That's how they make
10 money.

11 Q Would increased -- if you had more
12 exchanges listing XRP, would that help to increase
13 speculative volume?

14 A I don't know if that helps create
15 speculative volume.

16 Q Did you ever discuss with anyone at the
17 company that more listings, more XRP listing would
18 help speculative volume?

19 A I don't -- I don't recall having
20 conversations about increasing speculative volume
21 by adding more exchanges.

22 Q Was it a priority for Ripple to add XRP
23 to -- as a listing on exchanges?

24 A In the context of building out a product,
25 the way that the product works, is you need XRP

1 listed at these exchanges. And so, from a product
2 perspective, if we wanted to open a corridor in
3 Brazil, for example, or Mexico, yes, we wanted to
4 get an exchange that had strong security,
5 regulation, KYC, listing XRP in those different
6 destinations around the world.

7 Q How do you identify which corridors to
8 go -- to -- to focus on?

9 A So, one of -- one of the most acute needs
10 to solve, and one that I'm super-passionate about
11 as well is around remittances and the high cost of
12 remittances. And we even try to -- it's an
13 evolving sort of practice to understand where, you
14 know, what destinations are the best.

15 But it's -- it's a pretty focused number
16 and then it starts in terms of like flows and how
17 big those markets are, it starts to diminish pretty
18 quickly. And so we really look at a combination of
19 what our customers are telling us. And so if
20 customers are saying -- we've been surprised,
21 sometimes they say, listen that's a big market for
22 us, but we're not having a lot of traction there.
23 They tell us go to another market.

24 So, we listen to customers. We look at
25 macro analysis of where remittance volumes are. We

1 look at the regulatory environment in terms of, you
2 know, how local governments feel about crypto
3 exchanges and blockchain technology.

4 Q Did you ever discuss with anyone at
5 Ripple whether Ripple's prioritization of
6 speculative volume would pose issues with respect
7 to the federal securities laws.

8 A I do not recall.

9 Q Did you have any discussion with anyone
10 at Ripple regarding Ripple's prioritization of XRP
11 listings on exchanges, whether that would pose any
12 issues with respect to XRP status as a security?

13 A I do not recall.

14 Q If you turn to the first page of Exhibit
15 6, at the very bottom of the page it refers to
16 certain incentive programs.

17 Can you tell me what incentive programs
18 you had in place at the time?

19 A Oh, sorry. Wrong document.

20 MR. HECKER: Here.

21 A In the context of the product, incentive
22 program that I -- I don't know if it's even an a
23 incentive program or a rebate. It's a -- the
24 sending exchange and the receiving exchange often
25 charge trading fees [REDACTED] basis points.

1 If you add those both up, that's a
2 hundred basis points. And the margins for
3 remittances are very small. So adding a [REDACTED]
4 basis points often negates some of the value
5 proposition in terms of, you know, speed and
6 efficiency.

7 And so, in the context of ODL xRapid,
8 we've offered -- and again I don't know what the
9 exact term is -- incentives or rebates, to
10 exchanges. So that for ODL customers or xRapid
11 customers they wouldn't have to pay those fees.

12 And, you know, the general mechanics of
13 how it works is that -- yeah, that's the general
14 mechanics of how it works.

15 Q So the fee -- the rebate is provided to
16 the customer or is it provided to the exchange?

17 A The customer gets the benefit. It
18 depends really on what exchange, but the customer
19 receives the benefit because they get the lower
20 fee.

21 And we're talking about customer, just to
22 be specific, talking about, you know, regulated
23 financial institutions or banks, they get the
24 result. In most cases the incentives are provided
25 to the exchange themselves.

1 Q And the -- the rebate, is it paid in XRP
2 or fiat?

3 A I don't know.

4 Q Who would know?

5 A The Ripple legal team would know.

6 Q Is there someone outside the legal team
7 in business development or --

8 A I think the folks that make the contracts
9 are the Ripple legal team.

10 Q Okay. Turning back to what's been marked
11 as Exhibit No. 4 or about just in general actually.
12 In general -- you don't have to look at that, did
13 you ever discuss with anyone in the company whether
14 Ripple should seek no action relief from the SEC
15 with respect to its sales of XRP?

16 A I do not recall.

17 Q Did you ever discuss with anyone at
18 Ripple whether to steer clear of promoting XRP as
19 an investment opportunity?

20 A I do not recall.

21 Q Okay.

22 MR. DANIELS: One more follow-up on six,
23 I just want to make sure I understand your
24 testimony. Turning back to the second page with
25 the Bates ending 43125, that bullet we were

1 looking at, about the No. 1 XRP priority. And you
2 said it was to help with XRP liquidity. So you
3 said, that was an important goal to increase
4 liquidity; is that right?

5 THE WITNESS: To increase liquidity, yes.
6 Because that's how the way the product works.

7 MR. DANIELS: And part of the XRP
8 liquidity came from the market makers; is that
9 correct?

10 THE WITNESS: Yes.

11 MR. DANIELS: And then there was another
12 bucket of liquidity that was non-market maker
13 liquidity; is that correct?

14 THE WITNESS: Well, I don't know what
15 that other -- it's another bucket. We know it's
16 some market makers, that's what we know.
17 Everything else is in another bucket. Those could
18 be market makers, those could be hedge funds.

19 MR. DANIELS: Correct. Right. I think
20 you said there was a another bucket out there.

21 Why was that referred to as speculative?

22 THE WITNESS: I don't know. We've used
23 speculative, we've used natural, everyone has a
24 different term. We've never aligned on a term
25 before. The general industry from my knowledge

1 when they don't know, they use speculative.

2 And then as the product evolved and we
3 started working in conjunction with market makers,
4 we now use natural. So, like for the entire time
5 it's -- I mean, you can even see in some of the
6 documents that, you know, it shifted over the time
7 frame. So I don't specifically why it's called
8 speculative in this period of time and natural at
9 another period of time. But I know what it refers
10 to.

11 MR. DANIELS: Did you understand that in
12 the non-market maker bucket, the predominant goal
13 of those participants was speculation?

14 THE WITNESS: I don't know that there
15 predominant goal is speculation. In these kinds
16 of flows, market makers come in and market makers
17 come in to take spreads. And when you have
18 non-speculative flow or real use cases, that's
19 attractive for folks to -- for hedge funds and
20 market makers to come in and balance flows and
21 make spreads and that's -- that's essentially
22 their business.

23 MS. WAXMAN: Did you understand that an
24 increase in speculative volume would increase the
25 demand from XRP?

1 A I do not understand that.

2 Q Did you have an understanding that an
3 increase in the demand of XRP would increase --
4 would lead to an increase in price of XRP?

5 A If there's more demand for XRP than the
6 price goes higher? Is that the --

7 Q Yes. Did you have an understanding that
8 if there was more demand that that would lead to an
9 increase in price?

10 A I do not see any -- any correlation
11 between or any understanding of how demand
12 specifically addresses price.

13 Q Well, was there a finite universe of XRP
14 available?

15 A There is a finite number of XRP
16 available.

17 Q And so, did you have an understanding
18 that since there's a limited number of XRP, the
19 more people want the XRP, that the price would go
20 up?

21 A My understanding is that XRP is 90
22 something correlated with the rest of the crypto
23 market; Bitcoin and Ethereum.

24 Q What's the basis for that understanding?

25 A You can go to [REDACTED] and you can

1 visually see charts. You can see data on
2 [REDACTED] There's correlation analysis on
3 [REDACTED] And it's for the top assets, it's
4 really tough to make out any noise outside of
5 strong correlation with Bitcoin.

6 Q Did the price of XRP ever move in
7 relation to certain announcements by the company?

8 A I don't recall specific announcements
9 that have long lasting impact at all to XRP.

10 Q Well, that's different than what I asked.

11 Did the price of XRP ever move in
12 relation to any announcements that the company
13 made, any press releases about users signing on to
14 the xRapid product, for example?

15 A I did not see any -- I was not aware -- I
16 did not see anything of that note, in terms of
17 press release that moved the price of XRP.

18 Q Did the company ever make statements that
19 by increasing the number of users for its products
20 that's would increase the demand for XRP and
21 therefore, increase the price of XRP?

22 A I do not know.

23 Q When was xRapid created?

24 A Conceptually, you know, different
25 incarnations of xRapid were thought of and